

EXPLANATORY MEMORANDUM TO
THE POLICE ACT 1997 (CRIMINAL RECORDS) REGULATIONS 2009

2009 No. 460

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument, made under Part V of the Police Act 1997, adds the Scottish Crime and Drug Enforcement Agency (SCDEA) and the Criminal Records Bureau (CRB) to the list of organisations to be treated as they were a ‘police force’ for the purpose of enhanced criminal record certificates and inserts a provision to allow some registered persons to take applicants’ fingerprints if required as an alternative to attendance at a police station.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Part V of the Police Act 1997 (the Act) provides for the issuing of criminal conviction, criminal record and enhanced criminal record certificates. In processing an application for a certificate the Act provides that the Secretary of State can refuse to issue a certificate unless the application is supported by evidence as she may require, this being set out in administrative guidance. In particular the Secretary of State may refuse to issue a certificate unless an applicant has his fingerprints taken as may be prescribed.
 - 4.2 When processing enhanced criminal record certificates the Act requires the Secretary of State (acting in the guise of the CRB) to ask the ‘chief officer’ of every ‘relevant police force’ whether he holds any information that is relevant to the position applied for and which ought to be included in the certificate or not as the case may be. The Act contains powers to prescribe further bodies or departments in the list of those who must be treated as if they were a police force.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to England and Wales.
6. **European Convention on Human Rights**

Meg Hillier, Parliamentary Under-Secretary of State, has made the following statement regarding Human Rights:

In my view the provisions of the Police Act 1997 (Criminal Records) Regulations 2009 are compatible with the Convention rights.

7. Policy background

- 7.1 The objective of Part V of the Police Act 1997 is to widen access to criminal record checks to the private, public and voluntary sectors. The CRB provides an effective means through which employers, voluntary organisations and others can obtain details of an individual's criminal history as part of the recruitment process.
- 7.2 The CRB currently issues two levels of Disclosure: criminal record certificates (known as Standard) and enhanced criminal record certificates (known as Enhanced). These applications are made through 'registered persons' which are organisations registered with the CRB, commonly known as Registered Bodies (RBs).
- 7.3 In the main the process of verifying the identity of an applicant is undertaken by the RB prior to submission of application form, who then makes a statement on the form that it has been completed in accordance with CRB guidance. However on occasion there is a need for an applicant to be asked to have his fingerprints taken.
- 7.4 This could be where an applicant is not able to provide the requisite number and/or type of documents set out in CRB guidance but can also be during the Disclosure issue process, for example where a check of the PNC had identified a possible match and fingerprint analysis is required to establish whether the record belongs to the individual making the Disclosure application.
- 7.5 Where it is determined that fingerprints should be taken the CRB writes to the applicant asking him to identify which police station he wishes to attend to have his fingerprints taken.
- 7.6 The amendment in these Regulations inserts a further option for the taking of applicants' fingerprints by allowing this to be done by an RB who will follow standard police processes and guidelines. Once the fingerprints have been taken by the RB they will be forwarded to one central police force who will then undertake a 'speculative search' on police systems as per the provisions established in the Police Act 1997 (Criminal Records) Regulations 2002. This will neither place a mandatory requirement on an RB to take fingerprints nor place a mandatory requirement on an applicant to have his fingerprints taken by an RB, as the option will remain open for fingerprints to be taken by police forces. Only RBs that have the consent of the CRB will be able to avail themselves of this facility.
- 7.7 Both levels of Disclosure include checks of the Police National Computer (PNC) along with, where requested, a check against the lists of those considered unsuitable to work with children and/or vulnerable adults.
- 7.8 The Enhanced Disclosure also involves a check of information held by every 'relevant police force'. The CRB identifies whether a police force is 'relevant' by two means. The first is by using the address history provided by an applicant on the application form; the second is through the CRB 'Police Local Cross Referencing

Database' (PLX) which highlights if any force, not just those where the applicant lives, holds relevant information about an applicant.

- 7.9 The term 'police force' not only includes the 43 geographical police forces in England and Wales along with the 8 Scottish police forces and the Police Service Northern Ireland but also non geographical police forces such as British Transport Police and military police forces as well as organisations that are to be treated as if they were a police force such as Her Majesty's Revenue and Customs (HMRC) and the Serious Organised Crime Agency (SOCA).
- 7.10 This amendment will add the Scottish Crime and Drugs Enforcement Agency (SCDEA) to the list of such organisations that are to be treated as if they were a 'police force' so that they may be asked by the CRB to assess whether information they hold should be released on a disclosure to prospective employers etc. In this instance the Director General of SCDEA will take on the 'chief officer' role in determining whether any information he holds is relevant to the position applied for by individual applications.
- 7.11 Occasionally, where an application is made from outside of the UK, there will not be a 'relevant police force' for an applicant on the basis that they have no current or previous UK address history and no information has been shown via the PLX system. This could for example be for a foreign teacher applying for a post in the UK but nevertheless the Act still requires that the application is sent to a 'relevant police force' to proceed with the application. This amendment will therefore add the CRB to the list of those to be treated as if it were a 'police force' to allow it to internally process applications in these particular circumstances.

8. Consultation outcome

- 8.1 The addition of SCDEA and CRB as bodies that should be treated as if they were 'police forces' are minor amendments in terms of impact on customers. The insertion of provisions to allow RB's to take applicants' fingerprints is in response to customer requirements and will initially be piloted before roll out generally.

9. Guidance

- 9.1 The launch of SCDEA as a 'police force' will be published in the CRB newsletter Disclosure News. Upon completion of the RB Fingerprint pilot guidance will be issued in conjunction with the police service to all RB's via the CRB website and again using Disclosure News.

10. Impact

- 10.1 A Regulatory Impact Assessment has not been prepared for this instrument as there is no foreseen impact on the private or voluntary sector.

11. Regulating small business

- 11.1 There is no impact on small businesses as any changes will be minimal.

12. Monitoring & review

- 12.1 This provision will be reviewed and monitored as part of the CRB's general regulation reviews.

13. Contact

Helen Ryan at the Criminal Records Bureau Tel: 0151 224 6676 or email: Helen.ryan@crb.gsi.gov.uk, can answer any queries regarding the instrument